IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 572 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DAHIBEN RAMANLAL PARMAR

Versus

RAMANLAL RANCHHODBHAI PARMAR

Appearance:

MS SNEHA A JOSHI for Petitioner

MR DF AMIN for Respondent No. 1

MRS HANSA PUNANI, APP, for Respondent No. 2

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 09/03/2000

ORAL JUDGEMENT

1. This is a revision application under section 397 read with section 401 of the Criminal Procedure Code, at the instance of the wife, who had applied to the learned Magistrate for maintenance under section 125 of the

Criminal Procedure Code. The trial court had granted maintenance in favour of the wife, which order was challenged by the husband by way of a revision, which revision was allowed by the Sessions Court, and the judgement and order of the learned Magistrate granting maintenance in favour of the wife was quashed and set aside. Hence, the present revision.

2. As a result of the hearing and discussion, I find that it is not necessary to go into the merits of the impugned judgement, for the simple reason that the learned counsel for the parties have been able to arrive at a settlement (with the assistance of the court), on the following terms:-

[i] The amount of maintenance which the petitioner wife may have received so far under orders of the various Courts shall be retained by her as of right.

[ii] In case there are any arrears of maintenance, such arrears shall not survive and shall not be enforceable in view of the present settlement.

[iii] The respondent no.1 herein-the husband shall pay the petitioner-wife a sum of Rs.17,500/- (Rupees seventeen thousand five hundred only) by making the deposit in the Court of the learned JMFC, Godhra, latest by 9th May 2000. This payment shall be in full and final settlement of all the rights between the parties, including the alleged rights of the present petitioner-wife under section 125 of the Criminal Procedure Code for all time to come.

It is clarified that, in the opinion of this court, this settlement is in the interests of the petitioner-wife inasmuch as, as per the judgement and order of the Sessions Court, there was no marriage between the parties at all and that therefore the petitioner would not be entitled to any amount of maintenance whatsoever. However, I have assisted the parties in coming to the aforesaid settlement only on account of the fact that they may have cohabited for some time. It is further clarified that the judgement and order of the Sessions Court is sustained and is not interfered with in any manner whatsoever.

It is further directed that in case the amount of Rs.17,500/- is not deposited by the first respondent herein before the learned JMFC, Godhra by due date, it

shall bear interest at the rate of 15% per annum, computed on a monthly basis, and the said amount shall be recoverable by execution as if the present order is a decree of this Court.

3. This revision application is accordingly disposed of. Rule is discharged.

10th March 2000

4. The above portion of the judgement was dictated in the open court yesterday i.e. on 9th March 2000, but before the same could be signed, learned counsel for the petitioner mentioned that the petitioner is not willing to settle the matter as recorded in para 2 of the aforesaid judgement. Therefore, para 2 and onwards of the aforesaid judgement is revoked.

5. In the present revision learned counsel for the petitioner submits that the judgement and order of the Sessions Court, which is the subject matter of the present revision, deserves to be quashed and set aside and the order passed by the learned Judicial Magistrate (First Class) granting maintenance in favour of the petitioner-wife should be restored.

6. I have been carefully taken through both the judgements in question and I have carefully perused the oral and documentary evidence on record to which my attention has been drawn.

7. On a plain reading of the two judgements in question, it becomes obvious that the judgement and order of the learned Magistrate is a perversity in law, is based on a gross misreading of the evidence, is based on only part of the evidence while ignoring the material portions of the evidence, and can therefore be said to be based on no evidence.

8. The Sessions Court has reversed the judgement and order of the Magistrate on three main considerations, which are discussed hereunder.

8.1 The petitioner has consistently pleaded and has led extensive oral evidence to show that she was married to the respondent-husband on 9th January 1987. This date is important. The husband has proved that on this date of alleged marriage viz. 9th January 1987, his lawfully wedded wife was very much alive and she expired subsequently only on 16th October 1988. He has produced the relevant death certificate at Exh.42 which shows that

his wife has expired on 16th October 1988, and that her death was registered on 26th October 1988. It is, therefore, obvious that on the date of the alleged marriage i.e. 9th March 1987, the lawfully wedded wife of the respondent-husband was alive, and that therefore any marriage contracted by the present petitioner with the present respondent-husband was illegal and invalid in law.

8.2 This aspect has been glossed over by the learned Magistrate in his judgement and casually brushed aside by observing that the petitioner-wife might have made a mistake in stating the date of her alleged marriage because she is deposing after 7 or 8 years. This approach of the learned Magistrate is extremely casual, and runs contrary to the obvious evidence on record. Firstly, the petitioner has pleaded specifically in her application that she was married on 9th January 1987, in her deposition on oath she reasserts this very date, the petitioner's sister who has deposed on oath also asserts this date, and the Brahmin (Gor) who had performed the marriage also asserts the very same date viz. 9th January 1987. Furthermore, if this date was mistakenly stated, her application could have been amended at a later stage, which was not done. When the petitioner and two of her own witnesses deposed on oath that the alleged marriage took place on 9th January 1987, this evidence cannot casually be brushed aside by a mere observation that it may be a mistake or oversight on the part of the claimant-wife, because she is deposing after a number of years. To offer such an explanation by the learned Magistrate would amount to recording a finding contrary to the established evidence on record.

8.3 The next aspect is as to whether any marriage ceremony was performed between the present petitioner and the respondent-husband at all. The present petitioner has deposed, the respondent-husband has deposed and the Brahmin (Gor) who had performed the so-called marriage has also deposed. Each of them has specifically deposed that the so-called marriage ceremony consisted only of exchange of garlands, that there was no sacred fire, that there was no Saptapadi and/or any other ceremony. It is well settled law that the essentials of a Hindu marriage mandatorily require 7 rounds of the sacred fire without which no marriage can be said to have been performed.

8.4 The third aspect in respect of which no notice has been taken by the learned Magistrate at all, and which has rightly been noted by the Sessions Court with criticism, is that admittedly the present petitioner-wife

was earlier married to someone else. There is not the slightest evidence on record and no explanation or an offer of any explanation whatsoever which may even go to suggest that she had obtained a divorce from her former husband. Therefore, once it is an admitted position that she was married to someone else and does not show even in an indirect manner that she had obtained a divorce from her former husband, her so-called marriage to the present respondent is also illegal and of no consequence.

9. Learned counsel for the petitioner seeks to place reliance on a number of decisions.

9.1 Learned counsel for the petitioner seeks to place reliance upon a decision of the Gauhati High Court in the case of Boli Narayan Vs. Shiddheswari Morang, reported at 1981 Criminal Law Journal 674. She relies upon the observations of the court to the effect that a woman who comes in the life of a man, gives herself to the man, takes the family-life of the man and the man uses her as such, recognises her as his wife, must come within the fold of the term "wife", absence of ceremonial marriage notwithstanding and that acceptance of a woman as a wife, declaration of the status directly or indirectly and acceptance of status by the woman are enough to bring her within the purview of section 125. I do not propose to enter into a lengthy discussion on the aforesaid observations for the simple reason that on the facts of the case there is not the slightest iota of evidence that the petitioner and the respondent had ever lived together as husband and wife or that the respondent had accepted the petitioner as his wife and introduced her to society as his wife.

9.2 Learned counsel for the petitioner then seeks to place reliance upon a decision of the Orissa High Court in the case of Saudamini Dei Vs. Bhagirathi Raj, reported at 1982 Criminal Law Journal 539. This decision holds to the effect that the facts and circumstances of the case indicate that the man and the woman lived together as husband and wife and were treated as such by the community and the man treated the woman as his wife. On the facts of the case, as already discussed hereinabove, there is not the slightest evidence that the petitioner and the respondent had ever lived together as husband and wife or that they were treated as husband and wife by the community.

9.3 Learned counsel for the petitioner then sought to rely upon a decision of the Supreme Court in the case of Dwarika Prasad Satpathy Vs. Bidyut Prava Dixit reported

at 1999(8) Supreme 602. The principle laid down in the said decision is to the effect that the standard of proof in summary proceedings under section 125 is not as strict as is required in a trial of offence under section 494 of IPC, and if the claimant succeeds in showing that she and respondent lived together as husband and wife, court can presume legally wedded spouses. However, this presumption can be rebutted and that validity of a marriage cannot be decided in a proceedings under section 125 of Criminal procedure Code. There cannot be any quarrel with the principle laid down in the said decision. What is material is, as already observed hereinabove, there is not the slightest evidence that the petitioner and the respondent had ever lived together as husband and wife. Even assuming that the presumption can be drawn without showing that they lived together as husband and wife, on the facts of the case the presumption is very definitely rebutted by establishing by incontrovertible evidence that the lawfully wedded wife of the respondent was alive on the date of the alleged marriage between the petitioner and the respondent.

9.4 Learned counsel for the petitioner then sought to rely upon a decision of the Allahabad High Court in the case of Smt Rajmati Vs. Mithai and another, reported at 1999 Criminal Law Journal 3378. The principle laid down in the said decision is that the revisional court has no power to reassess the evidence and substitute its own findings, and that the order of the revisional court setting aside the findings of the Magistrate by reassessment of the evidence, is not proper since no legal ground available for revisional court to interfere with the findings of fact arrived at by the Magistrate. This decision would be of no assistance to the learned counsel for the petitioner for the simple reason as discussed hereinabove that the judgement and order of the learned Magistrate (which has been reversed by the Sessions Court) is based on a gross misreading of the evidence, (which goes far beyond mere misappreciation of the evidence) and in fact amounts to a perversity in law. The revisional court has not reversed findings of fact simpliciter, but has only given due emphasis to the evidence on record, which had been ignored by the learned Magistrate. In my opinion, therefore, the revisional order of the Sessions Court is amply justified.

10. I, therefore, find no substance in the present revision application and the same is, therefore, dismissed. It is further clarified that since the application by the petitioner under section 125 is

rejected, in case there are any arrears of maintenance under the order of the learned Magistrate which was operative till the date of this judgement, such arrears shall no longer be executed.

11. On a specific request of learned counsel for the petitioner, the operation of this judgement is stayed upto 14th April 2000, with the specific observation that there shall be no further extension.

****